



Robert B. Wiygul  
Partner

robert@wwglaw.com

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Raymond Greenwell, Member  
Mark Toepfer, Manager  
T.T. Barge Services Mile 237 LLC  
19368 Hwy 36  
Covington, LA 70433

T.T. Barge Services Mile 237 LLC  
c/o Raymond B. Greenwell, Registered Agent  
19368 Hwy 36  
Covington, LA 70433

Re: Notice of Intent to File Citizen Suit Under Section 505(b)(1) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1365(b)

Dear Mssrs. Greenwell and Toepfer:

This letter is to give you notice that the Louisiana Environmental Action Network, Inc. ("LEAN") and the Lower Mississippi Riverkeeper intend to sue T.T. Barge Services Mile 237 LLC ("T.T. Barge") for five years of chronic violations of the terms of its discharge permit issued under the Louisiana Pollution Discharge Elimination System ("LPDES permit").<sup>1</sup> These violations remain ongoing and constitute violations of sections 301 and 402 of the federal Clean Water Act, 33 U.S.C. §§ 1311, 1342.

Pursuant to T.T. Barge's permit, the company is prohibited from discharging wastewater into the Mississippi River except in compliance with the permit's terms. In particular, in order to protect public health and the environment, the permit contains maximum limits for various constituents such as oil and grease ("O&G"), chemical oxygen demand ("COD"), biochemical oxygen demand ("BOD"), and pH levels, as set by the Louisiana Department of Environmental Quality. Likewise, the permit requires regular and accurate monitoring and reporting associated with these constituents. Moreover, in order to ensure proper compliance, the permit requires T.T. Barge to employ best management practices, which necessarily include proper staff training concerning monitoring and reporting requirements and overall operations.

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<sup>1</sup> During the five-year period of time covered by this notice, three different versions of Permit No. LA0075213 regulated T.T. Barge's activities. The first version took effect June 1, 2007 and governed until superseded by a permit effective November 1, 2012. The current version of the permit became effective July 1, 2016.

By repeatedly violating the terms of its permit related to sampling frequency, proper reporting of violations, and best management practices, including staff training; discharging wastewater containing levels of pollutants higher than those allowed and constituents; and discharging a constituent not authorized by the LPDES permit, T.T. Barge is in violation of the Clean Water Act and must take immediate action to come into compliance.

## **I. Identity of Complainants**

### **A. Louisiana Environmental Action Network, Inc.**

LEAN is a Baton Rouge-based umbrella organization established to promote and protect the health of Louisiana's natural environment for the use and enjoyment of the people of Louisiana. In executing its purpose, LEAN ensures that the laws and regulations of the State, intended to preserve and enhance its natural resources and environmental quality, are diligently followed in letter and in spirit. LEAN has a particular interest in the preservation and restoration of water quality in the rivers and streams of Louisiana, and in protecting its members from exposure to public health risks. In addition, LEAN's interest in water quality flows directly from the personal interests of its members who own property, live, and/or work adjacent to the affected portion of the Mississippi River, and who use those waters that receive the contaminated discharges from T.T. Barge's facility for recreation, boating, swimming, and aesthetic enjoyment. Water pollution and threats to water quality from T.T. Barge's facility and its repeated violation of its permit directly harm these members of LEAN. LEAN can be reached as follows:

Louisiana Environmental Action Network, Inc.  
P.O. Box 66323  
Baton Rouge, LA 70896  
Phone: (225) 928-1315

### **B. Lower Mississippi RIVERKEEPER®**

The Lower Mississippi RIVERKEEPER® ("LMR") works with local communities to address the polluted state of the Mississippi River, which travels through 31 states and drains 2,350 square miles, making it one of the most endangered rivers in the United States. LMR energizes current activists to participate in environmental decisions, and educates the public and government leaders about environmental challenges and economic opportunities regarding the Mississippi River and how reduced water pollution benefits everyone. As part of its work, LMR monitors water quality, investigates reported pollution-related incidents, and seeks to compel polluters to comply with the Clean Water Act to reduce pollution in the River for the benefit of surrounding communities' health and the health of the environment. LMR is a member of LEAN.

Additionally, LMR is part of the international Waterkeeper Alliance, which provides a way for communities to stand up for their right to clean water and for the wise and equitable use of water resources, both locally and globally. The vision of the Waterkeeper movement is for fishable, swimmable and drinkable waterways worldwide, which the organization seeks to



achieve through grassroots advocacy.

Members of LMR own property, live, and/or work adjacent to the affected portions of the Mississippi River, and use those waters that receive the contaminated discharges from T.T. Barge's facility for recreation, boating, swimming, and aesthetic enjoyment. Water pollution and threats to water quality from T.T. Barge's facility and its repeated violation of its permit directly harm these members of LMR. LMR can be reached as follows:

Lower Mississippi RIVERKEEPER®  
c/o The Louisiana Environmental Action Network  
P.O. Box 66323  
Baton Rouge, LA 70896  
Phone: 225-928-1315

## **II. Effect of the Violations on Public Resources**

The LPDES permit allows T.T. Barge to discharge limited quantities of pollutants into the Mississippi River. As LMR recognizes:

The Mississippi River Basin is home to 1.5 million people, and over 350 industrial and municipal facilities are located adjacent to the River within the state of Louisiana. Approximately 175 of these facilities discharge wastewater into the river under the authority of state/federal permits, and of these approximately 120 facilities are located between Baton Rouge and New Orleans. Noncompliance with wastewater discharge permits by a large number of facilities along the River is widespread . . . In addition to the industrial pollution[,] when the Mississippi River flows into Louisiana it already contains a variety of chemicals including the herbicide Atrazine, which originates in stormwater runoff from agricultural fields in mid-western states and presents a potential health hazard. This places a particular burden on the Communities from Ascension Parish to the mouth of the Mississippi River that use surface water as their only source of drinking water.<sup>2</sup>

Thus, any permit violations by T.T. Barge cannot be viewed in isolation but also have a deleterious cumulative effect on the health of the Mississippi River and neighboring communities. Each violation compounds the preexisting threat to the residents and environment of the lower Mississippi River, which is impaired due to the activities of many industrial and agricultural users.

## **III. Legal Overview**

Section 301 of the Clean Water Act prohibits the "discharge of any pollutant by any person" without proper authorization, such as in compliance with the terms of a permit issued under Section 402. 33 U.S.C. § 1311(a). Section 402 establishes the National Pollutant Discharge Elimination System, a permitting program regulating the discharge of pollutants by industrial

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<sup>2</sup> <http://lmrk.org/the-mississippi-river/>

facilities, and provides for the issuance of such permits by individual States. 33 U.S.C. § 1342(h). In Louisiana, the issuance of such permits (known as LPDES permits) has been delegated to the Louisiana Department of Environmental Quality. Part III.A.2 of the applicable LPDES permit mandates compliance “with all conditions,” making any noncompliance a violation of both the Clean Water Act and the Louisiana Environmental Quality Act.

Congress provided for enforcement of the discharge limitations in the Clean Water Act through citizen suits like the present one. Title 33 U.S.C. § 1365 permits a citizen to bring a claim for a violation of any effluent standard or limitation under the Act. Violation of an NPDES permit is a violation of an effluent standard or limitation and is actionable under the citizen suit provision of the Clean Water Act. Please note that when sampling is weekly, each week with a missed sample or showing a violation of a parameter constitutes a separate violation of that parameter for each day of the week, or until the next valid test result demonstrating compliance is submitted. The same applies for the monthly and semi-annual sampling that the facility undertakes.

#### **IV. Specific Violations**

Over the past five years, T.T. Barge has violated its LPDES permit in a number of respects, including (A) sampling violations at Outfall 05A, (B) violation of effluent limitations at Outfall 05A, (C) sampling violations at Outfall 004, (D) sampling violations at Outfall 006, (E) sampling violations at Outfall 008, (F) reporting obligations, (G) discharge of an unpermitted pollutant, and (H) failure to employ best management practices with regard to facility operations.

##### **A. TT Barge has repeatedly failed to sample Outfall 05A at the required frequency.**

All three iterations of the applicable LPDES permit have required monitoring of Outfall 05A, “the intermittent discharge of incoming ballast water and void water,” including weekly sampling for oil and grease (“O&G”), chemical oxygen demand (“COD”), and pH level. A review of T.T. Barge’s self-reported violations, monthly reports, quarterly reports, operating logs, and discharge logs submitted under penalty of law and publicly available through LDEQ’s Electronic Document Management System (“EDMS”) reflects the following sampling-frequency violations (an asterisk is used where records indicate a lack of flow during one or more weeks of the month as relevant to calculating the number of violations):<sup>3</sup>

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<sup>3</sup> Upon information and belief, the sampling-frequency charts herein are based on monitoring periods when T.T. Barge actually discharged ballast water in the full number of weeks each month. LEAN and LMR note, however, that operating and discharge logs were not available through LDEQ’s EDMS database for all monitoring periods, and that many of the submitted logs contained no O&G sampling data. It is T.T. Barge’s obligation to provide accurate information to LDEQ explaining any assertion that less-than-weekly sampling does not amount to an excursion. Without such information, each instance of less-than-weekly sampling has been counted as a violation of the LPDES permit.



<u>Monitoring Period</u>	<u>Constituent</u>	<u>Required Frequency</u>	<u>Actual # Samples</u>	<u># Violations</u>
<b>FOURTH QUARTER 2016</b>				
12/01/16-12/31/16	COD	1/week	0	4
12/01/16-12/31/16	O&G	1/week	0	4
12/01/16-12/31/16	pH	1/week	0	4
11/01/16-11/30/16	COD	1/week	2	2
11/01/16-11/30/16	O&G	1/week	2	2
11/01/16-11/30/16	pH	1/week	2	2
10/01/16-10/31/16	COD	1/week	1	3
10/01/16-10/31/16	O&G	1/week	1	3
10/01/16-10/31/16	pH	1/week	1	3
<b>SECOND QUARTER 2016</b>				
06/01/16-06/30/16	COD	1/week	1	2*
06/01/16-06/30/16	O&G	1/week	1	2*
06/01/16-06/30/16	pH	1/week	1	2*
<b>SECOND QUARTER 2015</b>				
06/01/15-06/30/15	COD	1/week	3	1
06/01/15-06/30/15	O&G	1/week	3	1
06/01/15-06/30/15	pH	1/week	3	1
04/01/15-04/30/15	COD	1/week	1	1*
04/01/15-04/30/15	O&G	1/week	1	1*
04/01/15-04/30/15	pH	1/week	1	1*
<b>FIRST QUARTER 2015</b>				
01/01/15-01/31/15	COD	1/week	2	1*
01/01/15-01/31/15	O&G	1/week	2	1*
01/01/15-01/31/15	pH	1/week	2	1*
02/01/15-02/28/15	COD	1/week	3	1
02/01/15-02/28/15	O&G	1/week	3	1
02/01/15-02/28/15	pH	1/week	3	1
03/01/15-03/31/15	COD	1/week	2	1*
03/01/15-03/31/15	O&G	1/week	2	1*
03/01/15-03/31/15	pH	1/week	2	1*
<b>FOURTH QUARTER 2014</b>				
10/01/14-10/31/14	COD	1/week	0	4
10/01/14-10/31/14	O&G	1/week	0	4
10/01/14-10/31/14	pH	1/week	0	4
<b>THIRD QUARTER 2014</b>				
07/01/14-07/31/14	COD	1/week	0	1*
07/01/14-07/31/14	O&G	1/week	0	1*
08/01/14-08/31/14	COD	1/week	1	2*
08/01/14-08/31/14	O&G	1/week	1	2*
09/01/14-09/30/14	COD	1/week	4	1
09/01/14-09/30/14	O&G	1/week	4	1

<b>SECOND QUARTER 2014</b>				
06/01/14-06/30/14	COD	1/week	1	3
06/01/14-06/30/14	O&G	1/week	1	3
<b>FOURTH QUARTER 2013</b>				
11/01/13-11/30/13	COD	1/week	3	1
11/01/13-11/30/13	O&G	1/week	3	1
12/01/13-12/31/13	COD	1/week	3	1
12/01/13-12/31/13	O&G	1/week	3	1
<b>SECOND QUARTER 2013</b>				
04/01/13-04/30/13	COD	1/week	3	1
<b>FIRST QUARTER 2013</b>				
03/01/13-03/31/13	COD	1/week	3	1
03/01/13-03/31/13	O&G	1/week	3	1
<b>FOURTH QUARTER 2012</b>				
10/01/12-10/31/12	O&G	1/week	4	1
10/01/12-10/31/12	COD	1/week	4	1
10/01/12-10/31/12	O&G	1/week	4	1
<b>Total Days in Violation</b>				<b>588</b>

Weekly sampling is necessary to provide an accurate picture of T.T. Barge's compliance or lack of compliance with the numerical discharge limits contained within its permit. All three versions of the permit have contained monthly average limitations for pH and daily maximum limitations for COD, O&G, and pH. Each and every exceedance of the daily maximum is a violation of the permit. If, for example, T.T. Barge discharges incoming ballast water in four weeks out of the month but only analyzes constituents in two of those weeks, it becomes impossible to determine T.T. Barge's compliance during the remaining two weeks. An exceedance that occurred in one or both of the weeks that T.T. Barge failed to sample would go unnoticed and unreported. Any resulting harm to the environment would go unmitigated, and the public would receive no health-and-safety warning to limit their use of the affected river.

According to the NPDES Permit Writers Manual, more frequent monitoring is especially important where there is "[a] highly variable discharge" with regard to pollutant concentration and flow.<sup>4</sup> T.T. Barge's discharges at Outfall 05A have shown high variability over the five-year period at issue. For example, reported daily maximums for COD have ranged from 3 to 2220. Likewise, "[a] facility with problems achieving compliance generally should be required to perform more frequent monitoring to characterize the source or cause of the problems or to detect noncompliance." *Id.* T.T. Barge has a history of noncompliance with numerical effluent limitations (see below), which further illustrates the importance of frequent monitoring and the seriousness of its failure-to-sample violations.

#### **B. T.T. Barge has repeatedly violated numerical standards at Outfall 05A.**

The following chart shows T.T. Barge's violation of effluent limitations at Outfall 05A over the past five years:

<sup>4</sup> NPDES Permit Writers Manual 8.1.3 (September 2010).



<u>Monitoring Period</u>	<u>Numerical Standard</u>	<u>Sample Measurement</u>
12/01/13-12/31/13	COD Daily Max - 250	297
01/01/14-01/31/14	COD Daily Max - 250	439
09/01/16-09/30/16	COD Daily Max - 250	2220
09/01/16-09/30/16	O&G Daily Max - 15	35
	<b>Total Days In Violation</b>	<b>122</b>

Compliance with numerical standards is essential to avoid actual harm to the environment of the Mississippi River and surrounding communities. COD evaluates the amount of organic matter in discharged wastewater. Increased COD in excess of the numerical standard can indicate a higher amount of organic matter and a reduction in dissolved oxygen. In turn, decreased levels of dissolved oxygen can lead to fish kills and other harm to aquatic species. Likewise, oil and grease may contain toxic chemicals that contaminate the food chain and harm both aquatic life and human health.

**C. TT Barge has failed to sample Outfall 004 at the required frequency.**

In all three versions of the permit, T.T. Barge has been required to monitor Outfall 004, “the intermittent discharge of treated sanitary wastewater,” including semi-annual sampling for pH level. A review of monthly reports, quarterly reports, and discharge logs submitted by TT Barge under penalty of law and publicly available through LDEQ’s EDMS database reflects the following sampling-frequency violations at Outfall 004:

<u>Monitoring Period</u>	<u>Constituent</u>	<u>Frequency Required</u>	<u>Actual Frequency</u>
01/01/13-06/30/13	pH	1/6 months	0
	<b>Total Days in Violation</b>		<b>181</b>

Proper sampling is important for the reasons discussed above. Additionally, monitoring for these constituents, in particular, is important due to the potential risk to human health and aquatic life posed by sanitary wastewater. “Extremes in pH can make a river inhospitable to life. Low pH is especially harmful to immature fish and insects. Acidic water also speeds the leaching of heavy metals harmful to fish.”<sup>5</sup>

**D. TT Barge has failed to sample Outfall 005B at the required frequency.**

In all three versions of the permit, T.T. Barge has been required to monitor Outfall 005B, “the intermittent discharge of treated sanitary wastewater,” including semi-annual sampling for pH level. A review of monthly reports, quarterly reports, and discharge logs submitted by TT Barge under penalty of law and publicly available through LDEQ’s EDMS database reflects the following sampling-frequency violations at Outfall 005B:

<sup>5</sup> <https://www.grc.nasa.gov/www/k-12/fenlewis/Waterquality.html>

<u>Monitoring Period</u>	<u>Constituent</u>	<u>Frequency Required</u>	<u>Actual Frequency</u>
04/01/17-04/30/17	pH	1/month	0
<b>Total Days in Violation</b>			<b>30</b>

Proper sampling of pH is important for the reasons discussed above.

**E. TT Barge has repeatedly failed to conduct required pH sampling at Outfall 006.**

The three applicable versions of T.T. Barge's LPDES permit have required monitoring of Outfall 006, "the intermittent discharge of boiler blowdown," on a monthly basis, including for pH. A review of monthly reports, quarterly reports, and discharge logs submitted by TT Barge under penalty of law and publicly available through LDEQ's EDMS database reflects the following sampling-frequency violations for Outfall 006:

<u>Monitoring Period</u>	<u>Constituent</u>	<u>Required Frequency</u>	<u>Actual Frequency</u>
07/01/14-07/31/14	pH	1/month	0
08/01/14-08/31/14	pH	1/month	0
09/01/14-09/30/14	pH	1/month	0
10/01/14-10/31/14	pH	1/month	0
03/01/15-03/31/15	pH	1/month	0
04/01/15-04/30/15	pH	1/month	0
07/01/15-07/31/15	pH	1/month	0
01/01/16-01/31/16	pH	1/month	0
03/01/16-03/31/16	pH	1/month	0
<b>Total Days in Violation</b>			<b>277</b>

Proper sampling of pH is important for the reasons discussed above.

**F. TT Barge has failed to conduct required sampling at Outfall 008.**

The three applicable versions of T.T. Barge's LPDES permit have required monitoring of Outfall 008, "the intermittent discharge of treated sanitary wastewater," on a semi-annual basis, including for BOD, TSS, Fecal Coliform, and pH. A review of monthly reports, quarterly reports, and discharge logs submitted by TT Barge under penalty of law and publicly available through LDEQ's EDMS database reflects the following sampling-frequency violations for Outfall 008:

<u>Monitoring Period</u>	<u>Constituent</u>	<u>Required Frequency</u>	<u>Actual Frequency</u>
01/01/13-06/30/13	pH	1/6 months	0
<b>Total Days in Violation</b>			<b>181</b>

Proper sampling of pH is important for the reasons discussed above.



**G. T.T. Barge has regularly underreported its violations and submitted inconsistent information between its monthly reports, quarterly reports, operating logs, and discharge logs.**

Part III.D.4 of the LPDES permit requires that “[m]onitoring results shall be reported at the intervals and in the form specified[.]” In turn, Part II.X requires reports be submitted on an EPA form No. 3320-1 or approved substitute, which contains language for the principal executive officer or authorized agent to “certify under penalty of law that . . . the information submitted is . . . true, accurate, and complete.” The reports are due “no later than the 28th day of the month following the reporting period.” (*Id.*) Moreover, Part II.P requires T.T. Barge to submit quarterly discharge logs for incoming ballast water and/or void water, noting (1) volume of discharge, (2) date of discharge, (3) vessel name, and (4) vessel identification number. In particular, LEAN and LMR have identified the following violations:

1. For the First Quarter of 2013, T.T. Barge reported on April 26, 2013 that it had one excursion where a weekly sample was submitted for pH and COD testing but not O&G testing. Even so, the monthly report for March 2013 reported that both O&G and COD were only tested three times that month, with two resulting violations. The discharge log (which contains data for COD and pH but not O&G) seems to support the version of events on the quarterly report rather than the monthly report.<sup>6</sup>
2. It is unclear whether T.T. Barge reported its sampling violations related to Outfall 004 and Outfall 008 to LDEQ for the Second Quarter of 2014, as LEAN and LMR have been unable to locate a narrative report for this quarter in the EDMS database. Additionally, for April 2013, T.T. Barge reported under penalty of law that it sampled COD only three times that month, but it later submitted a discharge log with four sampling results for COD.<sup>7</sup>
3. For November 2013 and December 2013, T.T. Barge reported under penalty of law that it only sampled COD and O&G three times, with no related sampling violations. Subsequent operations and discharge logs submitted for the Fourth Quarter of 2013 documented seven COD samples in November over the course of three weeks, and nine COD samples in December over the course of two weeks. T.T. Barge did not submit data for O&G.<sup>8</sup>

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<sup>6</sup> Out of an abundance of caution, LEAN and LMR have noticed two sampling-frequency violations for March 2013 in the chart above, unless and until T.T. Barge can provide a satisfactory explanation for the discrepancies.

<sup>7</sup> Out of an abundance of caution, LEAN and LMR have noticed one COD sampling-frequency violation for April 2013 in the chart above, unless and until T.T. Barge can provide a satisfactory explanation for the discrepancies.

<sup>8</sup> Out of an abundance of caution, LEAN and LMR have noticed two sampling-frequency violations for November 2013 and two for December 2013 in the chart above, unless and until T.T. Barge can provide a satisfactory explanation for the discrepancies.

4. In its report for the Second Quarter of 2014 dated July 28, 2014, T.T. Barge reported only two excursions related to non-sampling at Outfall 05A, but in its June 2014 monthly report submitted under penalty of law T.T. Barge reported three sampling violations for each of COD and O&G.
5. For July 2014, T.T. Barge reported that it conducted no sampling of COD or O&G at Outfall 05A, resulting in a total of two sampling-related violations (one each for COD and O&G). Even so, the subsequently submitted discharge log contains a sampling result for COD. For August 2014, T.T. Barge reported that it only took one sample for COD and O&G and had two sampling violations for each of these constituents. Even so, the subsequently submitted discharge log contains five sampling results for COD taken over the course of four weeks. For September 2014, T.T. Barge reported a violation for COD and O&G despite submitting a discharge log showing five samples of COD over the course of four weeks.<sup>9</sup>
6. In its quarterly report dated January 28, 2015, T.T. Barge reported 4 excursions related to non-sampling of Outfall 05A that occurred during the month of October 2014, but monthly reports submitted under penalty of law reflect a total of 12 such excursions for the Fourth Quarter of 2014 (4 each for COD, O&G, and pH), as demonstrated by the chart above and correlated with the discharge log.
7. T.T. Barge reported a total of three excursions in its April 28, 2015 report for the First Quarter of 2015, and indicated that such excursions were solely related to non-sampling of Outfall 05A. The monthly reports for January, February, and March 2015 submitted under penalty of law each admitted to a one-week excursion for COD, O&G, and pH (which would amount to 9 total excursions related to Outfall 05A). The discharge log submitted for the quarter contains additional inconsistent information, including notations of "No Flow" during several weeks, making it difficult to assess the correct number of violations for Outfall 05A, in violation of T.T. Barge's duty to report accurate information.<sup>10</sup> In any event, TT Barge failed to report the sampling-related excursion at Outfall 006 for March 2015 (see above).
8. In a quarterly report dated July 22, 2015 for the Second Quarter of 2015, T.T. Barge reported two sampling excursions at Outfall 05A related to missed sampling during a single week in June, but the monthly reports and discharge log confirm the occurrence of three excursions (one each for COD, O&G, pH) (see

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<sup>9</sup> Out of an abundance of caution, LEAN and LMR have noticed all of the sampling-frequency violations reported by T.T. Barge in its monthly discharge logs for the Third Quarter of 2014 in the chart above, unless and until T.T. Barge can provide a satisfactory explanation for the discrepancies.

<sup>10</sup> Out of an abundance of caution, LEAN and LMR have noticed all of the sampling-frequency violations reported by T.T. Barge in its monthly reports for the Third Quarter of 2014, unless and until T.T. Barge can provide a satisfactory explanation for the discrepancies.



chart above). Also, TT Barge failed to report the sampling-related excursion at Outfall 006 for April 2015 (see chart above).

9. T.T. Barge reported no excursions in a quarterly report dated October 21, 2015 for the Third Quarter of 2015. TT Barge failed to report the sampling-related violation at Outfall 006 for July 2015 (see chart above).
10. On April 22, 2016, T.T. Barge reported no excursions for the First Quarter of 2016. TT Barge failed to report sampling-related violations at Outfall 006 for January 2016 and March 2016 (see chart above).
11. T.T. Barge reported 4 excursions due to missed sampling for Outfall 05A in its July 22, 2016 quarterly report for the Second Quarter of 2016. In its June 2016 monitoring report, however, T.T. Barge reported two violations each for COD, O&G, and pH (6 total), under penalty of law.
12. In a quarterly report dated October 24, 2016, T.T. Barge reported that there were no excursions for the Third Quarter of 2016. T.T. Barge failed to disclose its exceedance of the O&G daily maximum at Outfall 05A in September 2016 or the 24 sampling-related violations associated with Outfall 05A (see chart above).
13. T.T. Barge claimed in its January 25, 2017 quarterly report that there were no excursions during the Fourth Quarter of 2016. LEAN and LMR have been unable to locate an operating or discharge log for this quarter. Based on the sampling frequency noted on the monthly reports submitted under penalty of law, however, the total number of sampling-related excursions should have been 27 (see chart above). These monthly reports contained no notations that would suggest a lack of discharge for any of the applicable weeks.
14. Finally, the quarterly documentation submitted to LDEQ over the past five years has consistently contained inconsistencies between the discharge logs, sampling charts and/or operating logs. As noted above, Part II.P of the LPDES permit requires T.T. Barge to submit complete discharge logs noting, *inter alia*, all dates and volumes of discharged ballast and/or void water. Instead, T.T. Barge's discharge logs consistently reflect fewer dates of discharge than its sampling logs and/or operating logs. Solely by way of example, and not limitation, T.T. Barge's discharge log for the Third Quarter of 2013 contained five discharge entries covering five dates between July and September. By contrast, T.T. Barge's sampling log for this same time period contains data based on discharges that occurred on 11 different days. T.T. Barge's quarterly documentation for the five-year period at issue is replete with similar inconsistencies involving discharge logs containing fewer entries than the full scope of discharges reflected by the sampling logs.

T.T. Barge's underreporting and inconsistent reporting amounts to a serious violation of the Clean Water Act that may have misled LDEQ regulators into forming an inaccurate picture

of T.T. Barge's compliance history. As a result, LDEQ may have decided not to issue civil penalties or take other enforcement action based on inaccurate information. The frequency of these inconsistencies—and the fact that they have been occurring in monthly reports submitted under penalty of law—is indicative of widespread reporting problems at the facility and calls into question the overall accuracy and competency of T.T. Barge's reporting.

**H. T.T. Barge discharged a non-permitted pollutant into the Mississippi River.**

Part II.A of the LPDES permit makes clear that “[t]he permit does not in any way authorize the permittee to discharge a pollutant not listed or quantified in the application or limited or monitored for in the permit.” Nevertheless, T.T. Barge admitted in a quarterly report dated January 27, 2014 that personnel cleaned two open hopper barges that had been used to transport petroleum coke and discharged the wash water directly into the Mississippi River in violation of its permit. Wash water from petroleum coke barges may contain high concentrations of copper, mercury, iron, nickel and other toxins. There is no indication that T.T. Barge sampled for any of these constituents in the immediate aftermath of the incident despite a permitting obligation to undertake additional monitoring to determine the nature and extent of the adverse impacts, and then take steps to minimize or correct such impacts (LPDES Permit Part III.B.2, Duty to Mitigate).

**I. T.T. Barge's pattern or practice of the above-described violations over the past five years reflects further permit violations related to best management practices.**

The fact that T.T. Barge has repeatedly committed violations of the same provisions at the same outfalls over the past five years is also evidence of the following violations:

1. Failure to use best management practices “to prevent the discharge of contaminated waters or cargo,” including proper spill prevention and control measures and proper wastewater management (LPDES Permit Part II.I, General Requirements for Vessels)—especially with regard to the numerical exceedances and unpermitted discharge described above;
2. Failure to “take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment,” and to “take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge” (LPDES Permit Part III.B.2, Duty to Mitigate)—especially with regard to the numerical exceedances and unpermitted discharge described above;
3. Failure to “at all times properly operate and maintain all facilities and systems of treatment and control” (LPDES Permit Part III.B.3.a, Proper Operation and Maintenance)—especially with regard to improper sampling and reporting; and



4. Failure to ensure “adequate operating staff which is duly qualified” with regard to permit monitoring and compliance (LPDES Permit Part III.B.3.b, Proper Operation and Maintenance)—indeed, a frequent refrain in the quarterly reports announcing exceedances blamed personnel-related errors for the sampling-frequency violations, and T.T. Barge also blamed personnel for discharging wash water from the petroleum coke barges.

## **V. Remedies**

In accordance with Section 505(b) of the Act, 33 U.S.C. § 1365(b), LEAN and LMR hereby give formal notice of their intent to file suit against T.T. Barge in federal court, after the expiration of 60 days from the date of this notice. Copies of this notice are being provided to the State of Louisiana, through its Department of Environmental Quality, the U.S. Department of Justice, and the United States Environmental Protection Agency.

Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the regulation allowing for the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects T.T. Barge to a penalty of up to \$32,500 per day per violations for all violations occurring up to December 6, 2013, up to \$37,500 per day per violation for all violations occurring from December 7, 2013 through November 2, 2015, and up to \$52,414 for violations occurring after November 2, 2015. This means that the maximum potential penalty for the 1,379 days of numerical standard and reporting violations alone exceeds \$35,000,000. In addition to civil penalties, LEAN and LMR will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) of the Act, 33 U.S.C. § 1365(a), and requiring T.T. Barge to remediate any damage to the Mississippi River. Finally, LEAN and LMR will seek to recover costs and fees associated with this action, including attorneys’ fees, as allowed for prevailing parties under Section 505(d) of the Act, 33 U.S.C. § 1365(d).

## **VI. Conclusion**

LEAN and LMR hope T.T. Barge will take prompt action to remedy the violations identified in this notice letter, and will meet with T.T. Barge to further discuss methods of compliance and answer any questions T.T. Barge may have. Please direct all correspondence to the undersigned counsel, via the address and telephone number below.

Sincerely,



Robert Wiygul  
1011 Iberville Dr.  
Ocean Springs, MS 39564  
Phone: (228) 872-1125

cc: **Certified Mail & Return Receipt Requested**

Jeff Sessions, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

**Certified Mail & Return Receipt Requested**

Scott Pruitt, EPA Administrator  
Environmental Protection Agency  
Office of the Administrator, 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0003

**Certified Mail & Return Receipt Requested**

Samuel Coleman, EPA Region VI, Acting Regional Administrator  
Environmental Protection Agency  
Fountain Place 12th Floor, Suite 1200  
1445 Ross Avenue  
Dallas, TX 75202-2733

**Certified Mail & Return Receipt Requested**

Chuck Carr Brown, Secretary Louisiana DEQ  
P.O. Box 4301  
Baton Rouge, LA 70821-4301